



Oregon

Kate Brown, Governor

Oregon Board of Chiropractic Examiners

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Oregon Board of Chiropractic Examiners (OBCE)

Public Notice & E-Newsletter Update

October 2020

- President's Report
- Executive Director's Report
- Rules Updates and Policy Changes
- From Our Investigators

President's Report



Duty to Report

Many chiropractors are aware of the duty to report for child and elder abuse. However, what happens if we end up doing something where we get into trouble ourselves? Or when a colleague or boss does something against the rules? Our professional duty to report still applies under ORS 811-010-0040. If you are a certified chiropractic assistant and you witness something unethical in the office, you, too, are bound by the duty to report.

Self-reports may be reports about criminal charges or arrests since your last renewal, including misdemeanors, such as DUIs or other altercations. For felonies, a self-report to OBCE is required within ten days of the felony conviction. It may save time to self-report if there have been felony charges, so the Board may be kept up-to-date with what is happening.

Many individuals become concerned with self-reporting, thinking it may cause a loss of licensure or immediate suspension. Providing there are no patient safety concerns, loss of licensure is an atypical response by the Board. We've had past cases where the chiropractor self-reported, and the Board did routine follow-ups until there was a clear outcome and public safety was ensured.

If you encounter a situation in which you are not sure if you should report, you can call your malpractice carrier or call and speak with the Board Investigator to determine a need for reporting. Other than self-reporting, witnessing issues such as records deficits, billing discrepancies, drug or alcohol use in the office, and sexual boundary violations, are the most common areas where we, as a board, see duty to report issues arise.

If chiropractors or CAs have failed to report another individual, the issues typically worsen to cause patient harm. Many times, during an investigation, we have asked staff and colleagues of the licensee under investigation why they did not report the offending individual only to be told, "I wanted to move on and get out of there." All complaints are kept anonymous. Sometimes, the nature of the complaint makes it apparent who complained, but complainants are protected by law. We must work to look out for public protection and ourselves when leaving an unhealthy work location. If you fail to fulfill your duty to report in these types of situations, you will be held accountable and may face disciplinary board action for that failure.

Part of why Oregon is requiring fingerprinting every 5-6 years is;

- 1) We are not able to keep fingerprints on file. Only law enforcement is legally allowed to keep fingerprints.
- 2) Many chiropractic physicians and certified chiropractic assistants forget to self-report any issues such as misdemeanors or felonies, and it comes up on a background check. Failing to report these issues may result in harsher fines and sanctions.

The Oregon board recently dealt with cases of back child-support and back taxes. The licensees did not keep the Board informed, which lead to a temporary suspension of license. These individuals also failed to respond to the complaint's allegations and entered into a default judgment. It is vital to keep your e-mail and physical addresses updated with the Board. Being proactive about problems will save you time and frustration in the long run.

Franchesca Vermillion, DC
President, OBCE

Executive Director's Report



Board Member Transitions

Public board member, Amber Gies, and Dr. Ron Romanick completed serving each of their second terms at the end of September. Thank you, both, for your commitment and dedication to our public and to the chiropractic practice in our state. You will be missed.

Dr. Karen Baranick, formerly of our Peer Review Committee, was recently nominated by the Governor and appointed by the Senate to begin her first three-year term on October 1, 2020, as one of our 5 professional board members.

Attorney Lori Schmidt, of Coos Bay, was also nominated by the Governor and appointed by the Senate to begin her first three-year term on October 1, 2020, as one of our public board members.

We greatly look forward to working with Dr. Baranick and Ms. Schmidt in these coming years.

Temporary rules regarding CA and DC renewal

The Board voted to allow the following temporary administrative rules to lapse as of their expiration date:

- OAR 811-010-0083 License Renewal Payment Plans (COVID-19). This temporary rule expired September 15, 2020.
- OAR 811-015-0024 Continuing Education Requirements for First Year DC Licensees (COVID-19). This temporary rule expired September 15, 2020.

Rule Hearings in September's Board meeting:

1. **OAR 811-010-0008 [Fees](#)**. The Board voted to adopt the rule as amended and continue to leave public comment open until effective date of October 21, 2020. If the Board receives public comment prior to that date, it will continue rulemaking at its November board meeting.
2. **OAR 811-010-0085 [Application and Examination of Applicants](#)**. The Board voted to update the name of "Candidate's Guide" to "Applicant's Guide," effective October 21, 2020.

Rule Hearings in November's Board meeting:

1. **OAR 811-010-0110 Chiropractic Assistants**. The Board voted to enter into rulemaking at November's public meeting in order to include Non-Compliance with Executive Orders as unprofessional conduct for certified chiropractic assistants.
2. **OAR 811-010-0093 Guide to Policy and Practice Questions**. The Board voted to enter into rulemaking in November's public meeting in order to amend the date within the rule.
3. **OAR 811-015-0005 Records**. The Board voted to continue rulemaking to November's public board meeting in order to include the definition of informed consent.
4. **OAR 811-035-0015 Unprofessional Conduct in the Chiropractic Profession**. The Board voted to continue rulemaking to November's public meeting in order to include definition of fee splitting.
5. **OAR 811-035-0015 Unprofessional Conduct in the Chiropractic Profession**. The Board voted to continue rulemaking to November's public meeting in order to include definition of Non-Compliance with Executive Orders as unprofessional conduct.

Mackenzie Purnell

Administrative Specialist, CA Program, mackenzie.g.purnell@oregon.gov

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Continuing Education Requirements

Hello!

At our July board meeting, the Board mandated that each **active licensee obtain 6 hours of Cultural Competency continuing education, beginning January 2021, that must be completed by December 31, 2021.** You may choose the course(s) you would like to take. The 6 hours does not need to come from one course. You may select from a number of different courses to fulfill the 6 hours.

It is recommended that you receive training in the proper use of Personal Protective Equipment (PPE). The University of Western States is now offering a course for this purpose:

<https://www.dconline.org/courses/covid-19-staff-education/> please check the UWS website for this course. Additional resources are listed below:

- OSHA has specific standards for the use of PPE: <https://www.osha.gov/personal-protective-equipment/standards>
- The CDC offers this information: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/using-ppe.html>
And this training: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/training.html>

Donna Dougan

Administrative Specialist, DC Program, 503-373-1579, donna.dougan@oregon.gov

From Our Investigator

Multidisciplinary Clinics

Multidisciplinary clinics are gaining popularity in practically all aspects of healthcare. They have obvious beneficial attributes to both patients and providers. More or less one stop shopping for healthcare. They provide not only convenience for the patient to be able to consult with multiple, different, provider types all within the same facility which would provide them safe and effective continuity of care but benefits the providers as well as it enables them to consult with one another, often times instantly, allowing for faster, more efficacious care delivery.

Multidisciplinary clinics also offer a very lucrative opportunity for the owners of these facilities. The owners or principals of these facilities can be any licensed healthcare provider type. It offers the owner or principal the ability to employ a variety of healthcare provider types, not only for speedy delivery and effectiveness of care but also offers a much broader range of remuneration for the facility.

Employment at a multidisciplinary clinic can offer the opportunity of a lifetime for a recent graduate and new licensee, allowing them to participate in an integrated medical setting, expanding not only their personal knowledge but their overall clinical awareness. For the experienced provider, it can offer a place to practice without the burdens of management and overhead.

As all the offerings from “The Investigators,” we should try to provide you some insight into how to avoid complaints and pitfalls with the Board of Chiropractic Examiners. I offer this one as some suggestions based on my observations of recent board cases that I’ve investigated. There’s been an increase in complaints involving multidisciplinary clinics over the last couple of years. The complaints vary widely, involving either owners, individual provider employees,

ancillary personnel of these facilities, techniques and services offered by these facilities, and any combination of the above. I'm unable to run through every case for obvious reasons but I would like to offer a checklist of things to consider for the owners or principals of multidisciplinary clinics, providers that are employed by these clinics, and even the staff of these facilities.

If you have been offered or are considering a position in a multidisciplinary clinic, I would recommend you do your due diligence. Prior to accepting the position, research the following:

Check with the Secretary of State and ascertain:

1. The principal place of business (local or national, is it a virtual entity or brick-and-mortar facility?)
2. Who is the registered agent of the entity?
3. Who is the president or owner of the entity?
4. Who is the secretary of the entity?
5. Check the original dates the entity was initially registered with the Secretary of State.
6. Check to see if there have been any updates or recent amendments to the entity.
7. Read the summary history of the entity.
8. See if the owner/principal is licensed in the State of Oregon as a legitimate healthcare provider with the appropriate licensing boards.
9. If licensed, check to if there have been any board actions involving this provider.
10. Research to ensure the owner/principal is in fact the legitimate owner and not a front for an unlicensed healthcare provider or lay individual.
11. If you are already employed by a multidisciplinary clinic, be wary of owners/principals that request you provide services that exceed your particular scope of practice, or to perform a procedure you are not authorized to provide.
12. If you witness or have knowledge of the owner/principal practicing outside of their own scope of practice or giving orders or applying pressure to other providers to provide services or procedures they have not professionally endorsed.
13. If you are a licensed chiropractor in the State of Oregon and the owner/principal of a multidisciplinary facility/entity - do your due diligence and investigate the credentials and agency history of all your current and prospective providers that you employ or associate with in your facility/entity.
14. If you are licensed chiropractor in the state of Oregon and the owner/principal of the multidisciplinary facility/entity - do not engage in tactics that either require or pressure provider types to provide services or procedures that exceed their and your scope of practice that they have not personally endorsed and prescribed.
15. As an employee or an associate of a multidisciplinary facility/entity, do not allow yourself to be part of fraudulent billing or attesting to providing services that you did not render.
16. If you are the owner/principal, employee or associate of a multidisciplinary facility/entity, do not offer or advertise that you can

provide services or techniques that exceed either your skill level or legal scope of practice (as this would be construed as false advertising).

17. If you are a licensed chiropractor in the State of Oregon and the owner/principal of a multidisciplinary facility/entity that employs medical providers whose licenses exceed your own scope of practice and those providers provide services or procedures that are in violation of executive orders, statutes, or rules of their individual licensing boards, you bear a portion of the responsibility if disciplinary action were taken on that provider whom you employ. Their licensing board would have a duty to report that to the OBCE.

As always, these articles are just suggestions for you to consider and hopefully provide you with some insight in how to avoid a complaint with the Board.

Frank Prideaux, D.C.

Healthcare Investigator; 503-373-1848, Frank.prideaux@oregon.gov

NOTICE OF PROPOSED RULEMAKING

CHAPTER 811

BOARD OF CHIROPRACTIC EXAMINERS

FILING CAPTION: Amend the referred to document date within the rule

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2020 AT 5:00 PM

HEARING(S):

DATE: 11/18/2020

TIME: 8:30 AM - 3:30 PM

OFFICER: Franchesca Vermillion

ADDRESS: TBD

Zoom and Telephone

Open to public

All, OR 97301

SPECIAL INSTRUCTIONS:

Zoom and Telephone access will be posted on public agenda on agency website

NEED FOR THE RULE(S):

To amend the referred document date

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR Ch. 811, www.oregon.gov/obce

FISCAL AND ECONOMIC IMPACT:

None

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None as this amendment is a minor change

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

None

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT,

WHY NOT?

No, this amendment to the date did not need to be brought to the advisory committee.

CONTACT:

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AMEND: 811-010-0093

RULE TITLE: Guide to Policy and Practice Questions

RULE SUMMARY: Date Amended

RULE TEXT:

The Board's Guide to Policy and Practice Questions, originally dated January 14, 1998, and last revised **September 17, 2020**, is hereby adopted.

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 684

Statutes/Other Implemented: ORS 684.150 & 684.155

History:

[BCE 4-2020, amend filed 05/13/2020, effective 05/13/2020](#)

[BCE 12-2019, amend filed 10/10/2019, effective 10/10/2019](#)

[BCE 10-2018, amend filed 10/09/2018, effective 10/10/2018](#)

[BCE 8-2018, amend filed 06/14/2018, effective 06/15/2018](#)

BCE 1-2017, f. & cert. ef. 1-6-17

BCE 1-2013, f. & cert. ef. 6-6-13

BCE 1-2007, f. & cert. ef. 11-30-07

BCE 3-2006, f. & cert. ef. 3-27-06

BCE 1-2003, f. & cert. ef. 9-17-03

BCE 3-2000, cert. ef. 8-23-00

BCE 3-1998, f. & cert. ef. 8-4-98

NOTICE OF PROPOSED RULEMAKING

CHAPTER 811

BOARD OF CHIROPRACTIC EXAMINERS

FILING CAPTION: Non-Compliance of Executive Orders

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2020 AT 5:00 PM

HEARING(S):

DATE: 11/18/2020

TIME: 8:30 AM - 3:30 PM

OFFICER: Franchesca Vermillion

ADDRESS: TBD

Zoom and Telephone

Open to public

All, OR 97301

SPECIAL INSTRUCTIONS:

Zoom and Telephone access will be posted on public agenda on agency website

NEED FOR THE RULE(S):

To be able to regulate licensees in following all executive orders to protect public health

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR Ch. 811, www.oregon.gov/obce

FISCAL AND ECONOMIC IMPACT:

Minimal to none

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Less than .1% of our licensee base

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

None

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT,

WHY NOT?

This rule will fall in line with the Governor's Executive Orders and guidance

CONTACT:

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AMEND: 811-010-0110

RULE TITLE: Chiropractic Assistants

RULE SUMMARY: Date Amended

RULE TEXT:

(1) The certification period for chiropractic assistants in Oregon is a period equal to 12 months, expiring on the last day of the chiropractic assistant's birth month/renewal date.

(2) Chiropractic assistants may be certified upon compliance with the following:

(a) The chiropractic assistant applicant shall successfully complete a Board approved training course. The initial training course shall be at least twelve hours in length, of which eight hours shall be didactic training and four hours shall be practical training.

(A) The practical training must be in physiotherapy, electrotherapy and hydrotherapy administered by a health care provider licensed to independently provide those therapies.

(B) A chiropractic physician may perform the initial practical training provided this is direct contact time.

(C) The initial training must have been completed within 60 days preceding the application submission date.

(b) The applicant shall complete an application packet, and an open book examination administered by a national testing agency.

(c) If an applicant has a certificate or license from another state and adequate documentation of training, the Board may waive the requirement for the initial training course.

(3) Prior to initial certification, the training course verification form, completed application packet, passing examination results, and fees shall be submitted to the Board:

(a) A non-refundable application fee;

(b) A non-refundable examination fee; and

(c) An initial certification fee. A refund of the certification fee will only be allowed when requested within 60 days of the initial application.

(d) In circumstances beyond the applicant's control the Board may determine to refund the fees or portion thereof.

(e) In the event the Board requires the NBCE chiropractic assistant examination in lieu of the Board's examination, the fee in subsection (b) will be waived.

(4) The Board shall maintain an incomplete application file for six months from the date the application was received; afterward, applicants will need to re-apply.

(5) The applicant shall be at least 18 years of age.

(6) The chiropractic assistant shall not perform electrotherapy, hydrotherapy, or physiotherapy until they receive a certificate from the Board.

(7) A chiropractic assistant shall be directly supervised by the licensed chiropractic physician at all times. The supervising licensed chiropractic physician must be on the premises.

(8) Only under the direct supervision of the licensed chiropractic physician the chiropractic assistant

(a) may perform or provide physiotherapy, electrotherapy and hydrotherapy, the taking of vitals such as height, weight, blood pressure, temperature, pulse, respiration and/or body fat percentages, and other duties as described by the Board; and

(b) may not perform or provide physical examinations, taking initial histories, taking X-rays (unless properly licensed), interpretation of postural screening, performing manual muscle testing, or osseous adjustments or manipulations, or other tasks as prohibited by the Board.

(9) Chiropractic assistants shall report to the Board, in writing, their mailing address and place of employment. Notification of a change of mailing address or place of employment must be made within 10 days of the change.

(10) At least 30 days prior to the renewal date, the Board shall send the renewal notice to the chiropractic assistant at the last known mailing address, and/or email address.

(11) On or before the last day of the birth month, the chiropractic assistant shall submit to the Board the following:

(a) A completed renewal application and renewal fee;

(A) The renewal application may include a request for fingerprinting and a criminal background check with fees to be paid by the chiropractic assistant.

(B) Frequency of fingerprinting and criminal background checks will be determined by the Board.

(b) An attestation that the six hours of continuing education has been completed within the immediate 12 months prior to renewal date; and

(c) A completed OHA Healthcare Workforce Questionnaire; and

(d) As part of the annual registration, all licensees must complete the required health care workforce data survey and pay the fee established by the Oregon Health Authority pursuant to ORS 676.410.

(12) During the 30 day grace period immediately following the renewal date, the chiropractic assistant may continue to perform assigned duties, but must submit a completed renewal application, proof of continuing education, and payment of the renewal fee plus a delinquent fee.

(13) After the 30 day grace period, the chiropractic assistant shall not perform assigned duties until the renewal application, proof of continuing education, payment to the Board of the renewal fee and a delinquent fee are all submitted to the Board and approved.

(14) A chiropractic assistant has up to one year following their renewal date to renew and reinstate their certificate upon meeting the provisions of (12) and (13) above. After 12 months, a person must restart the application process.

(15) Continuing education programs may be comprised of subjects that are pertinent to clinical practices of chiropractic. Continuing education must meet the criteria outlined in OAR 811-015-0025 sections (8), (9) and (10). No continuing education hours may be carried over into the next renewal year. Evidence of successful completion of six hours of continuing education during the 12 months preceding the renewal must be submitted upon request by the Board.

(16) The chiropractic assistant's certificate shall be displayed at all times in the chiropractic physician's office during the chiropractic assistant's employment.

(17) The Board may refuse to grant a certificate to any applicant, may suspend or revoke a certificate, or may impose upon an applicant for certification or chiropractic assistant a civil penalty not to exceed \$1,000 upon finding of any of the following:

(a) Cause, which is defined as, but not limited to, failure to follow directions, unprofessional or dishonorable conduct, injuring a patient, or unlawful disclosure of patient information. The supervising chiropractic physician is required to notify the Board, in writing, of any dismissal of a chiropractic assistant for cause within ten days. The Board shall determine if there is cause for action and shall be governed by the rules of the Board adopted pursuant to ORS Chapter 183;

(b) Conviction of a misdemeanor involving moral turpitude or a felony;

(c) Non-disclosure of misdemeanor or felony convictions; or

(d) Failure to notify the Board of a change of location of employment as required by these rules.

(18) Unprofessional or dishonorable conduct is defined as: any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable chiropractic assistant performance; or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractic assistant:

(a) Engaging in any conduct or verbal behavior with or towards a current patient that may reasonably be interpreted as sexual, seductive, sexually demeaning or romantic (also see ORS 684.100).

(b) A certificate holder shall not engage in sexual relations or have a romantic relationship with a current patient unless a consensual sexual relationship or a romantic relationship existed between them before the commencement of the chiropractic assistant-patient relationship.

(A) "Sexual relations" means:

(i) Sexual intercourse; or

(ii) Any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the chiropractic assistant for the purpose of arousing or gratifying the sexual desire of either chiropractic assistant or patient.

(B) A patient's initiation of, or participation in, sexual behavior or involvement with a chiropractic assistant does not change the nature of the conduct nor lift the prohibition.

(C) In determining whether a patient is a current patient, the Board may consider the length of time of the chiropractic assistant-patient contact, evidence of termination of the chiropractic assistant-patient

relationship, the nature of the chiropractic assistant-patient relationship, and any other relevant information.

- (c) Use of protected or privileged information obtained from the patient to the detriment of the patient.
- (d) Violating section (8) of this rule;
- (e) Charging a patient for services not rendered;
- (f) Intentionally causing physical or emotional injury to a patient;
- (g) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;
- (h) Soliciting or borrowing money from patients;
- (i) Possessing, obtaining, attempting to obtain, furnishing, or prescribing controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; illegally using or dispensing controlled drugs;
- (j) Aiding, abetting, or assisting an individual to violate any law, rule or regulation intended to guide the conduct of chiropractic assistants or other health care providers;
- (k) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;
- (l) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;
- (m) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the assigned duties of a chiropractic assistant;
- (n) Acting as a chiropractic assistant without a current Oregon certificate;
- (o) Allowing another person to use one's chiropractic assistant certification for any purpose;
- (p) Resorting to fraud, misrepresentation, or deceit in applying for or taking the certificate examination or obtaining a certificate or renewal thereof;
- (q) Impersonating any applicant or acting as a proxy for the applicant in any chiropractic assistant certificate examination;
- (r) Disclosing the contents of the certificate examination or soliciting, accepting, or compiling information regarding the contents of the examination before, during, or after its administration;
- (s) Failing to provide the Board with any documents requested by the Board;
- (t) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except attorney-client privilege;
- (u) Failing to answer truthfully and completely any question asked by the Board on an application for licensure or certification, or during the course of an investigation, or any other questions asked by the Board;
- (v) Claiming any academic degree, or certification, not actually conferred or awarded;
- (w) Disobeying a final order of the Board; ~~and~~
- (x) Splitting fees or giving or receiving a commission in the referral of patients for services;:-
- (y) Receiving a suspension or revocation of a certificate for a chiropractic assistant, or other license or certificate by another state based upon acts by the chiropractic assistant or applicant that describes acts

similar to this section. A certified copy of the record of suspension or revocation of the state making that is conclusive evidence thereof; ~~and-~~

(z) Non-compliance of any Executive Order signed by the Governor of the State of Oregon.

(19) Violations may be grounds for disciplinary action against the supervising chiropractic physician under ORS 684.100(9).

Statutory/Other Authority: ORS 684.155

Statutes/Other Implemented: ORS 684.054 & 684.155(c)(A)

History:

[BCE 5-2020, amend filed 05/14/2020, effective 05/14/2020](#)

[BCE 12-2019, amend filed 10/10/2019, effective 10/10/2019](#)

[BCE 9-2019, amend filed 07/31/2019, effective 07/31/2019](#)

[BCE 12-2018, amend filed 11/21/2018, effective 11/22/2018](#)

[BCE 1-2018, amend filed 01/09/2018, effective 01/10/2018](#)

BCE 3-2017, f. 4-26-17, cert. ef. 1-1-18

BCE 2-2016, f. & cert. ef. 6-6-16

BCE 5-2014, f. & cert. ef. 9-5-14

BCE 4-2014, f. & cert. ef. 8-11-14

BCE 4-2013, f. 10-21-13, cert. ef. 11-1-13

BCE 3-2013, f. 10-8-13, cert. ef. 11-1-13

BCE 1-2012, f. & cert. ef. 5-31-12

BCE 2-2010, f. & cert. ef. 6-15-10

BCE 2-2008, f. & cert. ef. 10-9-08

BCE 1-2002, f. & cert. ef. 2-6-02

BCE 1-2001, f. 1-31-01, cert. ef. 2-1-01

BCE 3-2000, cert. ef. 8-23-00

CE 4-1997, f. & cert. ef. 11-3-97

CE 2-1993, f. 3-1-93, cert. ef. 4-23-93

Reverted to CE 1-1990, f. & cert. ef. 2-15-90

CE 5-1992(Temp), f. 10-21-92, cert. ef. 10-23-92

CE 1-1990, f. & cert. ef. 2-15-90

NOTICE OF PROPOSED RULEMAKING

CHAPTER 811

BOARD OF CHIROPRACTIC EXAMINERS

FILING CAPTION: To include definition of informed consent

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2020 AT 5:00 PM

HEARING(S):

DATE: 11/18/2020

TIME: 8:30 AM - 3:30 PM

OFFICER: Franchesca Vermillion

ADDRESS: TBD

Zoom and Telephone

Open to public

All, OR 97301

SPECIAL INSTRUCTIONS:

Zoom and Telephone access will be posted on public agenda on agency website

NEED FOR THE RULE(S):

To include the definition of Informed Consent within our records rule for further clarification

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR Ch. 811, www.oregon.gov/obce

FISCAL AND ECONOMIC IMPACT:

No fiscal impact

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None due to the fact that this is clarifying a definition

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

5 of our board members who will be reviewing and voting on this rule are licensed chiropractic physicians and some either own or work for small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The inclusion of this definition will make clearer what is supposed to be included in licensee records.

CONTACT:

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AMEND: 811-015-0005

RULE TITLE: Records

RULE SUMMARY: Informed Consent definition

RULE TEXT:

(1) Failure to keep complete, accurate, and minimally competent records on all patients shall be considered unprofessional conduct.

(a) Each patient shall have exclusive records which shall be clear, legible, complete, and accurate as to allow any other chiropractic physician to understand the nature of that patient's case and to be able to follow up with the care of that patient, if necessary.

(b) Every page of chart notes will identify the patient by name and one other unique identifier (date of birth, medical record number, etc.), and the clinic of origin by name and address. Each entry will be identified by day, month, year, provider of service, and author of the record.

(c) Clear, legible, complete, accurate, and minimally competent records shall contain the following:

(A) A description of the chief complaint or primary reason the patient sought treatment from the licensee.

(B) Documentation of any significant event that affects the chief complaint of the patient or the general history of the health of the patient.

(C) An accurate record of the diagnostic and therapeutic procedures that the licensee has employed in providing chiropractic services to the patient, including, but not limited to:

(i) Height, weight, blood pressure, and pulse at initial examination. If initial examination is via telemedicine, record patient's height and weight by patient's report. Record blood pressure and pulse if patient is able to obtain remotely. Height, weight, blood pressure and pulse is recorded on subsequent visits, as clinically indicated;

(ii) Examinations and the results of those examinations;

(iii) Diagnoses;

(iv) Treatment plan, any subsequent changes to the treatment plan, and the clinical reasoning for those changes;

(v) Dates on which the licensee provided clinical services to the patient, as well as the services performed, and clinical indications for those services;

(vi) Areas of the patient's body where the licensee has provided care;

(vii) Patient's response to treatment;

(viii) Therapeutic procedures must be clearly described including information such as providers involved, timing, setting, and tools used, as appropriate.

(D) Document informed consent has been obtained in the chart. Regarding informed consent and PARQ (Procedures, Alternatives, Risks, and Questions) requirements, refer to OAR 811-035-0005 (2)(a) and (b).

(E) Other clinically relevant correspondence, including, but not limited to: telephonic or other patient communications, referrals to other practitioners, and expert reports.

(d) A chiropractic physician shall maintain billing records for services performed for which payment is received from or billed to the patient, an insurance company, or another person or entity who has assumed the financial responsibility for the payment of services performed to the patient. Such records will be maintained for the same amount of time as other patient records. At a minimum, a billing record will include the date of the patient encounter or financial entry, a notation of the services performed either by description or code, common codes such as the AMA Current Procedural Terminology (CPT) codes may be used without additional explanation or legend, and the fee charged for the services billed. If third party payors are billed, the billing instrument (CMS 1500 form or its successor) should be retrievable. Such information may be maintained on a handwritten or printed ledger, with the assistance of a computer or other device either by direct entry or with a particular program or application, or by an alternative method. To the extent billing records do not contain patient health care records not kept elsewhere, they are not considered part of the clinical record.

(e) Such information as described in section (d) must be readily available upon request of the patient, an agent of the patient, an insurance carrier or entity responsible for the payment of the services, or by the Board or other entity with a legal right to review such information.

(2) Practitioners with dual licenses shall indicate on each patient's records under which license the services were rendered.

(3) A patient's entire health care and billing records shall be kept by the chiropractic physician a minimum of seven years from the date of last treatment. However, if a patient is a minor, the records must be maintained at least seven years from the time they turn 18 years of age.

(a) If the treating chiropractic physician is an employee or associate, the duty to maintain entire records shall be with the chiropractic business entity or chiropractic physician that employs or contracts with the treating chiropractic physician.

(b) Chiropractic physicians providing file reviews, second opinion consultations, or independent medical examinations (IME) shall be responsible for keeping an available copy of all authored reports for seven years from the date authored.

(4) If a chiropractic physician releases original radiographic films to a patient or another party, upon the patient's written request, they should create an expectation that the films will be returned, and a notation shall be made in the patient's file or in an office log where the films are located (either permanently or temporarily). If a chiropractic physician has radiographic films stored outside their clinic, a notation shall be made in the patient's file or in an office log where the films are located and the chiropractic physician must ensure those films are available for release, if requested by the patient.

(5) The responsibility for maintaining entire patient records may be transferred to another chiropractic business entity or to another chiropractic physician as part of a business ownership transfer transaction.

(6)(a) A chiropractic physician shall establish a plan for custodianship of these records in the event they are incapacitated, become deceased, are or will become unable to maintain these records pursuant to paragraph (6)(b).

(b) In the event a chiropractic physician dies or becomes incapacitated and unable to practice, and there is no other chiropractic physician associated with the practice, the deceased, incapacitated, or unavailable chiropractic physician's personal representative, guardian, administrator, conservator, next of kin, or other legal representative shall notify the Board in writing of the management arrangement for the custody and transfer of patient files and records. This individual shall ensure the security of, and access to, patient files and records by the patient or other authorized party, and must report plans or arrangements for permanent custody of patient files and records to the Board in writing within 180 days. Transfer of patient files and records must occur within one year of the death of the chiropractic physician.

(7) Except as provided for in paragraph (7)(e) of this rule, a chiropractic physician who is an independent contractor or who has an ownership interest in a chiropractic practice shall provide notice when leaving, selling, or retiring from the chiropractic office where the chiropractic physician has provided chiropractic services.

(a) Notification shall be sent to all patients who received services from the chiropractic physician during the two years immediately preceding the chiropractic physician's last date for seeing patients. This notification shall be sent no later than thirty days prior to the last date the chiropractic physician will see patients.

(b) The notice shall include all of the following:

(A) A statement that the chiropractic physician will no longer be providing chiropractic services at the practice;

(B) The date on which the chiropractic physician will cease to provide services; and

(C) Contact information that enables the patient to obtain the patient's records.

(c) The notice shall be sent in one of the following ways:

(A) A letter sent through the US Postal Service to the last known address of the patient with the date of the mailing of the letter documented, or

(B) A secure electronic message.

(d) In the event of an illness, unforeseen emergency, incarceration, or other unanticipated incident, a chiropractic physician is unable to provide a thirty day notice as required by paragraph (7)(a) of this rule, the chiropractic physician shall provide such notice within thirty days after it is determined that the physician will not be returning to practice.

(e) Paragraph (7) of this rule does not apply to the chiropractic physician who is departing as an employee of another Oregon licensed chiropractic physician. It is the employer's responsibility to maintain continuity of care, or to comply with this rule, if patient care will be terminated upon an employee's leaving employment or retiring.

(8) Disposal of records shall be completed by a process that results in permanent destruction of the records and shall be compliant with all state and federal law.

STATUTORY/OTHER AUTHORITY: ORS 684

STATUTES/OTHER IMPLEMENTED: ORS 684.115

NOTICE OF PROPOSED RULEMAKING

CHAPTER 811
BOARD OF CHIROPRACTIC EXAMINERS

FILING CAPTION: Non-Compliance of Executive Orders

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2020 AT 5:00 PM

HEARING(S):

DATE: 11/18/2020
TIME: 8:30 AM - 3:30 PM
OFFICER: Franchesca Vermillion
ADDRESS: TBD
Zoom and Telephone
Open to public
All, OR 97301

SPECIAL INSTRUCTIONS:

Zoom and Telephone access will be posted on public agenda on agency website

NEED FOR THE RULE(S):

To be able to regulate licensees in following all executive orders to protect public health

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR Ch. 811, www.oregon.gov/obce

FISCAL AND ECONOMIC IMPACT:

Minimal to none

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Less than .1% of our licensee base

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

None

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT,

WHY NOT?

This rule will fall in line with the Governor's Executive Orders and guidance

CONTACT:

Mackenzie Purnell
503-373-1573
Mackenzie.g.purnell@oregon.gov
530 Center St NE
Suite 620
Salem, OR 97301

AMEND: 811-035-0015

RULE TITLE: Unprofessional Conduct in the Chiropractic Profession

RULE SUMMARY: Unprofessional conduct

RULE TEXT:

Unprofessional conduct means any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable chiropractic practice; or a willful or careless disregard for the health, welfare, or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractic physician:

- (1)(a) Engaging in any conduct or verbal behavior with or towards a patient that may reasonably be interpreted as sexual, seductive, sexually demeaning or romantic (also see ORS 684.100).
 - (b) A licensee shall not engage in sexual relations or have a romantic relationship with a current patient unless a consensual sexual relationship or a romantic relationship existed between them before the commencement of the doctor-patient relationship.
 - (c) "Sexual relations" means:
 - (A) Sexual intercourse; or
 - (B) Any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the licensee for the purpose of arousing or gratifying the sexual desire of either licensee or patient.
 - (d) In determining whether a patient is a current patient, the Board may consider the length of time of the doctor-patient contact, evidence of termination of the doctor-patient relationship, the nature of the doctor-patient relationship, and any other relevant information.
 - (e) A patient's initiation of, or participation in, sexual behavior or involvement with a licensee does not change the nature of the conduct nor lift the prohibition.
- (2) Charging fees for unnecessary services;
 - (3) Failing to teach and/or directly supervise persons to whom chiropractic services have been delegated;
 - (4) Practicing outside the scope of the practice of chiropractic in Oregon;
 - (5) Charging a patient for services not rendered;
 - (6) Intentionally causing physical or emotional injury to a patient;

- (7) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;
- (8) Soliciting or borrowing money from patients;
- (9) Possessing, obtaining, attempting to obtain, furnishing, or prescribing controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; illegally using or dispensing controlled drugs;
- (10) Aiding, abetting, or assisting an individual to violate any law, rule, or regulation intended to guide the conduct of chiropractic physicians or other health care providers;
- (11) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;
- (12) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;
- (13) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the practice of chiropractic;
- (14) Practicing chiropractic without a current Oregon license;
- (15) Allowing another person to use one's chiropractic license for any purpose;
- (16) Resorting to fraud, misrepresentation, or deceit in applying for or taking the licensure exam or obtaining a license or renewal thereof;
- (17) Impersonating any applicant or acting as a proxy for the applicant in any chiropractic licensure examination;
- (18) Disclosing the contents of the licensure examination or soliciting, accepting, distributing, or compiling information regarding the contents of the examination before, during, or after its administration; Notwithstanding this section, the Ethics and Jurisprudence Examination is open book and there is no restriction on applicants discussing answers to individual questions between themselves or with others;
- (19) Failing to keep complete, accurate, and minimally competent records on all patients;
- (20) Failing to provide the Board with any documents requested by the Board;
- (21) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except attorney-client privilege;
- (22) Failing to answer truthfully and completely any question asked by the Board on an application for licensure or certification, or during the course of an investigation, or any other question asked by the Board;
- (23) Failing to comply with state and federal laws regarding child and elderly abuse, and communicable diseases;
- (24) Failing to provide and maintain a safe and sanitary treatment environment;
- (25) Claiming any academic degree or certification, not actually conferred or awarded;
- (26) Disobeying a final order of the Board;
- (27) Non-compliance of any Executive Order signed by the Governor of the State of Oregon;
- ~~(27) Splitting fees or giving or receiving compensation in the referral of patients for services;~~

28) Fee splitting meaning compensation by or to a chiropractic physician or chiropractic clinic solely for referral of a patient. ▲

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(a) Chiropractic physicians may not refer patients based on whether the referring chiropractic physician has negotiated a discount for specialty services. Chiropractic physicians may not accept:

(A) Any compensation of any kind, from any source for referring a patient other than distributions of a health care organization's revenues as permitted by law.

(B) Compensation for services relating to the care of a patient from any health care facility/organization to which the physician has referred the patient.

(C) Compensation for referring a patient to a research study.

(b) Compensation as something given or received as payment including but not limited to: bartering, tips, money, donations, goods, or services.

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~~(28)~~ (29) Making an agreement with a patient or person, or any person or entity representing patients or persons, or provide any form of consideration that would prohibit, restrict, discourage or otherwise limit a person's ability to file a complaint with the Board, to truthfully and fully answer any questions posed by an agent or representative of the Board regarding a board proceeding, or to participate as a witness in a Board proceeding;

~~(30)~~ (29) It shall be considered unprofessional conduct for a licensee to own or operate a clinic or practice as a surrogate for, or be employed by, an individual or entity who could otherwise not own and/or operate a chiropractic clinic under OAR 811-010-0120; and

~~(31)~~ (30) Chiropractic physicians holding an ownership interest as described in OAR 811-010-0120 may be held responsible, entirely or in part, for staff who provide patient services. This includes a responsibility to render adequate supervision, management, and training of staff or other persons including, but not limited to, chiropractic physicians, student interns, chiropractic assistants and/or others practicing under the licensee's supervision. Chiropractic physicians with staff may be held responsible, entirely or in part, for undue influence on staff or a restriction of an associated chiropractic physician from using their own clinical judgment.

Statutory/Other Authority: ORS 684

Statutes/Other Implemented: ORS 684.155

History:

[BCE 1-2020, amend filed 01/22/2020, effective 01/22/2020](#)

[BCE 8-2019, amend filed 05/30/2019, effective 05/31/2019](#)

[BCE 14-2018, amend filed 11/21/2018, effective 11/22/2018](#)

BCE 7-2014, f. & cert. ef. 10-28-14

BCE 1-2014, f. & cert. ef. 1-29-14

BCE 2-2009, f. & cert. ef. 12-22-09

BCE 2-2003, f. & cert. ef. 12-11-03

BCE 2-2000, f. & cert. ef. 5-4-00

BCE 1-1999, f. & cert. ef. 4-7-99

CE 3-1996, f. & cert. ef. 9-26-96

CE 2-1996(Temp), f. & cert. ef. 5-31-96

CE 6-1995, f. & cert. ef. 12-19-95

NOTICE OF PROPOSED RULEMAKING

CHAPTER 811
BOARD OF CHIROPRACTIC EXAMINERS

FILING CAPTION: Include the definition of fee splitting

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2020 AT 5:00 PM

HEARING(S):

DATE: 11/18/2020

TIME: 8:30 AM - 3:30 PM

OFFICER: Franchesca Vermillion

ADDRESS: TBD

Zoom and Telephone

Open to public

All, OR 97301

SPECIAL INSTRUCTIONS:

Zoom and Telephone access will be posted on public agenda on agency website

NEED FOR THE RULE(S):

To bring clarification to the definition of fee splitting

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR Ch. 811, www.oregon.gov/obce

FISCAL AND ECONOMIC IMPACT:

Minimal to none

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

None

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT,

WHY NOT?

Further clarification of existing rule.

CONTACT:

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Statutory/Other Authority: ORS 684

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History:

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